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PAYMENT OF INTEREST ON CHEROKEE JUDGMENT

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON INDIAN AFFAIRS

OF THE

H. R. 6444
HOUSE OF REPRESENTATIVES

ON

H. R. 6444

DECEMBER 14, 1916



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SUBCOMMITTEE

MR. KONOP, *Chairman*

MR. TILLMAN

MR. DEMPSEY

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PAYMENT OF INTEREST ON CHEROKEE JUDGMENT.

SUBCOMMITTEE OF THE COMMITTEE ON INDIAN AFFAIRS,

HOUSE OF REPRESENTATIVES,

Thursday, December 14, 1916.

The subcommittee this day met, Hon. Thomas F. Konop (chairman) presiding.

There were also present Hon. John N. Tillman and S. Wallace Dempsey, members of the subcommittee.

(The bill under consideration is as follows:)

[H. R. 6444, Sixty-fourth Congress, first session.]

A BILL Providing for the payment of certain items of interest on the judgment of the Court of Claims of May eighteenth, nineteen hundred and five, in favor of the Cherokees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the general deficiency appropriation act of June thirtieth, nineteen hundred and six (Thirty-fourth Statutes at Large, page six hundred and sixty-four), and the act of Congress of March fourth, nineteen hundred and nine (Thirty-fifth Statutes at Large, pages nine hundred and thirty-eight and nine hundred and thirty-nine), construing same, so far as the said acts provide for the payment of the judgment of the Court of Claims of May eighteenth, nineteen hundred and five, and interest thereon, in favor of the Cherokee Nation and the Eastern Cherokees, be, and the same are hereby, so amended as to carry interest on the several funds arising from items one, two, three, and four, respectively, of said judgment, as follows, to wit: At five per centum per annum, being the rate of interest provided to be paid on said funds by the terms of the contract between the United States and the Cherokee Nation of December nineteenth, eighteen hundred and ninety-one, ratified by act of Congress of March third, eighteen hundred and ninety-three (Twenty-seventh Statutes at Large, page six hundred and forty, section ten), on which contract the said judgment of the Court of Claims was based, on the several respective amounts of said funds, the said amounts to be determined according to the decision of the Comptroller of the Treasury of July eleventh, nineteen hundred and six, relating thereto, from July second, nineteen hundred and six, to date of payment, and the date of payment is hereby declared to be the day when payment is ready to be made to the individual beneficiaries entitled to receive shares of said funds and warrants therefor actually issued: *Provided*, That if the whole or any part of any of the said funds shall have been heretofore, or shall be hereafter, paid out, no further interest shall be allowed or paid on any such part so paid out: *Provided further*, That interest shall be allowed and paid on the original principal sum of item four of said judgment from July first, eighteen hundred and ninety-three, as provided in the contract of eighteen hundred and ninety-one, mentioned above, and in the decree of said Court of Claims of May eighteenth, nineteen hundred and five, hereinbefore referred to.

Mr. Konop. We will first hear from Mr. Hastings.

STATEMENT OF HON. WILLIAM W. HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA.

Mr. HASTINGS. Mr. Chairman and gentlemen of the subcommittee, I introduced the bill H. R. 6444 at the suggestion of Mr. Boudinot, who is present and desires to be heard.

This bill is designed to correct the calculation of interest on a judgment rendered by the Supreme Court in what is known as the Eastern Cherokee case, which will be fully explained by Mr. Boudinot.

Mr. KNOX. Was it the Supreme Court?

Mr. HASTINGS. Yes, sir. It went from the Court of Claims to the Supreme Court.

I do not care to go into the merits of this case except to say that Mr. Boudinot has contended ever since this money was distributed, to me, to the departments, and in our country, that the interest was erroneously calculated.

I might say in his behalf that he has spent most of his life at work in one way or the other on this case. The Government of the United States appointed a commission in 1889 to negotiate an agreement with the Cherokee Tribe to secure what was known as the Cherokee Outlet, being 6,000,000 acres of land, afterwards added to old Oklahoma. In the agreement that was made on December 19, 1891, there was a provision, which was a part of the consideration for the transfer of this land to the Government of the United States for an accounting of all back moneys due the Cherokees from the Government, and there was a provision that if the Cherokees were not satisfied with this accounting, that they could go into the courts. The Government did appoint two accountants, Messrs. Slade and Bender. They rendered an account to the Cherokee Tribe, and the Cherokee Nation accepted it. The Government of the United States declined to pay it. Afterwards an enabling act was passed allowing a suit to be brought in the Court of Claims. It was brought and afterwards appealed to the Supreme Court of the United States, and a judgment rendered on four items that will be explained more fully. This money was paid in part to the Cherokee Nation and in part to the nation for the benefit of the Eastern Cherokees in 1910. Mr. Boudinot has always contended that the interest on these items was not calculated in accordance with the agreement or the decision of the court. He has spent more time in the origination of this case than anybody else in Oklahoma.

I introduced this bill at his suggestion, and it was referred to the Committee on Indian Affairs, and the Committee on Indian Affairs referred it to the department for a report, and there is a report here among the files conceding that Mr. Boudinot is in part correct, and according to his calculation they concede that there is some \$10,000 due. I want to make this preliminary statement to assure the committee of the amount of work that Mr. Boudinot has done in this matter and to ask the committee that, if a favorable report is made upon this bill or any part of it, you will make some provision direct in the bill for the compensation of Mr. Boudinot. He has a contract with W. C. Rogers, the principal chief of the Cherokee Nation. Of the Eastern Cherokees, who were interested in this judgment, in 1910 there were more than 30,000. Perhaps nine-tenths of them reside in

Oklahoma. Some of them reside in nearly every State of the Union. A great many of them are dead. It would be impossible for him to get contracts with these individual Indians. He is going to ask, if the committee finds any amount is due, that there be a separate report from the committee, asking that this amount conceded to be due be appropriated and the disputed amount referred to the Court of Claims to be litigated. If it is referred to the court there will have to be a jurisdictional act enabling them to go into court, and there ought to be some provision for representation before the court.

I might add that this is the case that Senator Owen represented in the Court of Claims and in the Supreme Court of the United States, and Mr. Boudinot assisted in getting up the evidence and the data, and that Senator Owen desires to come before the committee to make a statement as to what connection Mr. Boudinot has had with this matter. I will say to you that I do not see how anyone who represents them can be compensated unless you make some sort of a provision in the bill for it.

MR. KXOP. Was there any compensation paid to these attorneys in the prosecution of this case in the Supreme Court and the Court of Claims?

MR. HASTINGS. There was 15 per cent paid. That was allowed by the Court of Claims on a very large sum. Mr. Boudinot has a contract with the principal chief of the Cherokee Nation, who represents, I should say, nine-tenths of them who live in the Cherokee Nation, but there are some scattered all over the United States. An Eastern Cherokee is not necessarily a citizen of the present Cherokee Nation.

MR. KXOP. Has this sum been paid to Senator Owen?

MR. HASTINGS. Fifteen per cent on the original amount that was paid to Senator Owen and his associates, but Mr. Boudinot contends that the interest on the items allowed was erroneously calculated, and it is to that one point alone that he claims that the interest was not calculated and the amount was not paid that the original agreement said should be paid and the court said should be paid.

MR. KXOP. Is it your contention if there should be an additional amount allowed for interest, as you claim, that 15 per cent of that amount should be paid to Mr. Boudinot?

MR. BOUDINOT. That is my contention.

MR. KXOP. I have a letter from the department with reference to these claims and also a letter to the Secretary of the Treasury from the comptroller in which he refers to the judgment of the Court of Claims rendered May 18, 1905, reported in 40 Court of Claims, 252. That makes no reference whatever to the case in the Supreme Court. This is the same case that was appealed to the Supreme Court?

MR. HASTINGS. Yes, sir; and reported in volume 202 United States, 101. That is all I desire to say at this time.

MR. KXOP. We will be glad to hear from you, Mr. Boudinot.

STATEMENT OF MR. FRANK J. BOUDINOT.

MR. KXOP. Before you begin, I do not think it will be necessary for you to make any statement as to the merits of the controversy that was adjudicated by the court. As I undersand it, this bill is supposed to correct items of interest which were ordered to be paid by the court?

Mr. HASTINGS. That is the point.

Mr. KONOP. Then there is no necessity of going into the merits of the controversy involved in that litigation.

Mr. BORDINOT. This bill, I should like to say, is in the nature of a compromise. I have had this matter up before the Treasury Department and the Department of the Interior for a great many years. The claim of the Cherokee Nation is based on the agreement of 1891 referred to by Mr. Hastings. It is for a part of the money consideration that was contracted in the agreement to be paid for the cession of the Cherokee Outlet to the United States. The proposition is that the United States got the land and has not paid the consideration. That is the proposition, briefly stated.

Mr. KONOP. Well, that is not the proposition that is involved in the present bill?

Mr. BORDINOT. No, sir.

Mr. KONOP. That was the proposition that was adjudicated by the court?

Mr. BORDINOT. No, sir; not yet. That is not the proposition embodied in the bill. That is the claim of the Cherokees for a compromise of which this bill has been prepared. That agreement contained a stipulation to this effect—I can quote it:

So long as the money or any part of it shall remain in the Treasury of the United States after this agreement shall have become effective, such sum so left in the Treasury of the United States shall bear interest at the rate of five per centum per annum.

That stipulation is embodied as a part of subdivision 6 of the agreement. The agreement will be found printed in Senate Executive Document No. 56, Fifty-second Congress, first session.

Mr. KONOP. Is that a long document?

Mr. BORDINOT. It includes not only the agreement, which is two or three pages, but includes all of the correspondence, the report of the commissioner who negotiated the agreement, and the reports of the Commissioner of Indian Affairs and the Assistant Attorney General. It contains about 25 pages.

Mr. KONOP. Is it obtainable now?

Mr. BORDINOT. Yes, sir; it can be obtained in the Library and possibly in the document room.

Mr. KONOP. And all we are concerned in is what you have just quoted?

Mr. BORDINOT. Yes, sir; that is all. It is the sixth subdivision of article 2 of the agreement.

That claim resulted from this judgment of the Court of Claims of May 18, 1905, referred to in the bill and in the Secretary's report. With these preliminary remarks, I will state just what this bill proposes to do and then the amount of the claim and the difference between the two. This bill proposes to pay interest on the amount that was actually appropriated to pay the judgment and placed in the hands of the Secretary of the Interior July 2, 1906, in trust for the Cherokees at 5 per cent interest per annum until paid.

Mr. KONOP. On July 2, 1906?

Mr. BORDINOT. Yes, sir.

Mr. KONOP. As I understand, the amount awarded was paid to the Secretary of the Interior July 2, 1906?

Mr. BORDINOT. Yes, sir.

Mr. Koxop. And you want interest from July 2, 1906, to the time when the warrants were paid?

Mr. Boudinot. Yes, sir. That is what the bill provides. In round numbers, I will state for the information of the committee that, according to the best calculation I have been able to make, it will amount to date to about \$825,000 for all of the items, items 1, 2, 3, and 4. Item 2, the item that belongs to the individuals called the Eastern Cherokees, amounts to about \$800,000 up to now.

Mr. Koxop. Would you have any objection, Mr. Boudinot, to taking up these items one after the other embraced in the judgment of the Court of Claims and explaining just what you claim on each item?

Mr. Boudinot. Item 1, appropriated on June 30, 1906, and paid to the Secretary of the Interior July 2, 1906, amounted to \$11,520.46.

Mr. Koxop. That was for principal and interest?

Mr. Boudinot. Yes, sir.

Mr. Koxop. The sum was \$2,125?

Mr. Boudinot. Yes, sir.

Mr. Koxop. With interest from February 27, 1819, to date of payment?

Mr. Boudinot. Yes, sir; and treating the date of the appropriation or the time it was paid to the trustee for the Cherokee Nation as the date of payment it amounted on that date to \$11,520.46. It is the interest on that amount until the warrants were issued to pay it that we claim.

Mr. Koxop. The principal sum in item No. 1 is \$2,125?

Mr. Boudinot. Yes, sir.

Mr. Koxop. Together with interest from February 27, 1819, to July 2, 1906?

Mr. Boudinot. Not exactly.

Mr. Koxop. To the date of payment?

Mr. Boudinot. To May 14, 1906.

Mr. Koxop. To May 14, 1906?

Mr. Boudinot. Yes, sir.

Mr. Koxop. You claim interest on this amount of \$11,520.46 from May 14, 1906, to when?

Mr. Boudinot. From July 2, 1906.

Mr. Koxop. Until when?

Mr. Boudinot. Until it is paid.

Mr. Koxop. All of it is not paid?

Mr. Boudinot. I have a letter from the Commissioner of Indian Affairs about that. I do not know whether it has been paid or not, and neither do they.

Mr. Hastings. A part has been paid.

Mr. Boudinot. Probably it has been merged into the general funds of the Cherokee Nation since that date, but interest was not paid at all after May 14, 1906, on this item until May 26, 1910. Then the Secretary transferred this item to the school fund of the Cherokee Nation, which is an interesting-bearing fund under the general law. He was directed to put it to the credit of the school fund by the court at the time the decree was rendered. For some reason he did not do it; he held it there for four years. This bill simply proposes to pay the interest for the four years that he held it without interest.

Mr. KONOR. He failed to put it in the school fund?

Mr. BORDINOT. The court had directed him to do that.

Mr. KONOR. Would you consider when this money of item 1 was turned from the Secretary of the Interior to the school fund that that was the date of payment provided for in the judgment?

Mr. BORDINOT. No, sir. I would say that the date of payment provided for in the judgment would be the date of appropriation, as far as this item is concerned. This item was in favor of the Cherokee school fund.

Mr. KONOR. You claim that when he turned it to the school fund that that was the date of payment as provided for in this judgment?

Mr. BORDINOT. Yes, sir.

Mr. KONOR. You claim interest for about four years?

Mr. BORDINOT. On that item.

Mr. KONOR. About \$11,000.

Mr. BORDINOT. Yes, sir. That is what the bill provides; that is all.

Item No. 2 is the big one. On July 2, 1906——

Mr. KONOR (interposing). First state the item as the court stated it—the principal sum?

Mr. BORDINOT. \$1,111,284.70, with interest at 5 per cent per annum from June 12, 1838, to date of payment.

Mr. KONOR. What did that amount to July 2, 1906?

Mr. BORDINOT. \$4,937,036.16, which was paid to the Secretary of the Interior on July 2, 1906, in trust for the Cherokee Nation. The direction was that it should be held by him for certain preliminary purposes, paying the attorney fees, and then to be distributed to the individual Cherokees entitled to receive it. This bill provides for the payment of 5 per cent interest on that amount from the same date.

Item No. 2, according to the same method of calculation, under the same decision of the comptroller in July, 1906, amounted to \$4,937,036.16. This bill provides for the payment of 5 per cent interest on that amount until it is actually paid to the Cherokees.

Mr. KONOR. It has not been paid?

Mr. BORDINOT. On March 15, 1910, the part conceded by the Government was paid out, leaving a balance, in round numbers, of \$603,000.

Mr. KONOR. How did you arrive at \$603,000? Is that the interest on the \$4,000,000 from July 2, 1906, to this time in 1910?

Mr. BORDINOT. The \$603,000 is the difference between what this amount would have been if they had paid the interest up to March 15, 1910, and the amount that was paid out on March 15, 1910. If we had received 5 per cent on the \$4,937,036.16 until March 15, 1910, it would have amounted to \$4,813,503.31, if the interest had been paid as provided by the bill. On March 15, 1910, they paid us \$4,209,560.51.

Mr. HASTINGS. Less some attorneys fees that had been paid direct to the attorneys?

Mr. BORDINOT. Yes, sir. This calculation is the net result. I am just giving you the figures that would result as appropriation if the bill went into law. Wherever the amount paid to attorneys or for any other purpose was of sufficient size to invade the interest-bearing principal that has been deducted.

Mr. KONOP. I am not quite clear as to item No. 2. On July 2, 1906, \$4,000,000 was paid to the Secretary of the Interior?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. To satisfy this judgment?

Mr. BOUDINOT. That is it.

Mr. KONOP. And the Secretary of the Interior was supposed to pay this money out to the Cherokee Indians in compliance with this judgment?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. But he did not do it?

Mr. HASTINGS. Until March 15, 1910.

Mr. KONOP. Until March 15, 1910. Deducting the attorney fees from this \$4,000,000, and computing it at 5 per cent from July 2, 1906, to March 15, 1910, you claim that there is how much due?

Mr. BOUDINOT. \$603,942.84.

Mr. HASTINGS. And he also claims interest on that amount from March, 1910, up to the date that the payment on the \$603,000 then due had been made.

Mr. BOUDINOT. Yes, sir; that is what I claim.

Mr. TILLMAN. Was the \$600,000 paid?

Mr. BOUDINOT. No, sir.

Mr. KONOP. But the \$4,000,000 was paid?

Mr. BOUDINOT. It was paid.

Mr. KONOP. Cutting out the attorney's fees from July 2, 1906?

Mr. BOUDINOT. Cutting out the attorneys fees and the expenses incurred by the Secretary of the Interior for making the roll to make the payments, the Cherokees themselves received \$4,105,810.77 on March 15, 1910. It may be of interest to state that if this debt had been paid when due under the agreement, the date when due having been found by the Supreme Court to have been March 4, 1895, the Cherokees on that date would have received \$4,263,000. After waiting 15 years the Cherokees themselves received \$4,105,000 instead of \$4,263,000. That has nothing to do with the merits of the proposition, except to show how much money they really lost.

Mr. KONOP. By the delay?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. Take up the other item.

Mr. BOUDINOT. That is a small item.

Mr. KONOP. The principal is \$432.28 with interest thereon at the rate of 5 per cent from January 1, 1874, to date of payment.

Mr. BOUDINOT. Calculating in the same way it amounted to \$1,140.49.

Mr. KONOP. On July 2, 1906?

Mr. BOUDINOT. Yes, sir. That amount has been held by the Secretary ever since that date without interest. It is still held by him without interest.

Mr. KONOP. You claim interest on that amount of \$1,100 to date?

Mr. BOUDINOT. That is entitled to draw interest like any other fund in the hands of the Secretary. I have his letter stating that the money is held on his books without interest.

Mr. HASTINGS. If you have the letter, should it not be incorporated in the record?

Mr. BOUDINOT. Yes, sir.

Mr. KXOR. All of the correspondence and any documents that seem of interest will be incorporated at the end of the hearing.

Take up item No. 4.

Mr. BOUDINOT. Item No. 4 is the one in which an error has occurred. The error has been admitted by both the comptroller, as you see in the letter, and by the Secretary of the Interior. The principal sum was \$20,406.25 with interest from July 1, 1903, to date of payment.

Mr. KXOR. It should be July 1, 1893?

Mr. BOUDINOT. Yes, sir. In the printed report of this case, 202 United States, that error does not appear. The judgment as it appears in the Supreme Court printed report has a corrected date.

Mr. KXOR. It has July 1, 1893.

Mr. BOUDINOT. Yes, sir.

Mr. KXOR. I notice in the letter of the Secretary of the Interior and also in the letter of the comptroller to the Secretary of the Treasury that they admit that that is a clerical error and that it should be from July 1, 1893, to the date of payment. What was paid on that?

Mr. BOUDINOT. What was actually paid, not counting this mistake?

Mr. KXOR. What was paid by the department?

Mr. BOUDINOT. It was paid in the same manner as they paid the others.

Mr. KXOR. Did they compute the interest from July 1, 1893?

Mr. BOUDINOT. No, sir.

Mr. KXOR. The decision shows that it should be computed from July 1, 1893, as you suggest?

Mr. BOUDINOT. The decision, yes; but the judgment itself made this clerical mistake. It showed in the judgment July 1, 1903.

Mr. TILLMAN. What is your theory as to how that error occurred?

Mr. BOUDINOT. Next month we may write letters and say "1916" instead of "1917."

Mr. TILLMAN. Just a careless mistake?

Mr. BOUDINOT. Yes, sir. This judgment was rendered after 1900.

Mr. KXOR. Could you not get that corrected by the court?

Mr. BOUDINOT. No, sir; I have tried. I had this matter before the Court of Claims and they finally refused to receive any application.

Mr. KXOR. On an application for the correction of a judgment, because there had been a mistake in the date, a clerical mistake, I should think that the court would readily correct it.

Mr. BOUDINOT. I think they ought to. I think the simple way would be to have it corrected here.

Mr. KXOR. By Congress?

Mr. BOUDINOT. Yes, sir.

Mr. KXOR. You say that you have made an application to the court to correct it?

Mr. BOUDINOT. Ever since I discovered the mistake I have taken it up with everybody who ought to or might correct it—the Treasury Department, the Interior Department, and the Court of Claims.

Mr. KXOR. I do not know the proceeding in any of the United States courts, but if it happened in our courts in the State a formal application to the court to correct a clerical error in a judgment would be granted on proper showing.

Mr. HASTINGS. The reason they would not hear you was because of the time that had elapsed, because Congress had made an approx-

priation, and because the matter had been closed. There was no money to pay any additional judgment, and so they did not hear you at all.

Mr. Boudinot. They did not hear me at all. But that was the reason, that the recommendation should be made from the Interior Department. That was given me informally, that the matter had been passed on—it had gone through the Supreme Court.

Mr. Hastings. Answering Mr. Konop's question, they said your contention about item 4 showed that the interest should be calculated from July 2, 1906, up to the present time?

Mr. Boudinot. Yes, sir.

Mr. Hastings. And part of it was paid?

Mr. Boudinot. Yes, sir. I have only made the calculation on item 4, because it belonged to the principal of the Cherokee national fund.

Mr. Hastings. That was an interest-bearing fund?

Mr. Boudinot. Yes, sir; a 5 per cent interest-bearing fund. Interest on the amount of item 4 ought to have been paid—and it would have been paid but for this clerical error—up to the date of appropriation. The letter of the Secretary concedes that, but says that he is not ready to say whether we should have interest on this increased amount from July 2, 1906, up to the date of payment.

Mr. Konop. That is the same proposition as in items 1, 2, and 3, interest from July 2, 1906, to March 15, 1910?

Mr. Boudinot. As to item 2, March 15, 1910; but these other items belong to different funds, and the total sum involved is from July 2, 1906, until paid, whatever the date might be. They might have been paid before March 15, 1910.

Mr. Hastings. Only up to the date of payment?

Mr. Boudinot. Yes, sir. I am contending that they were interest-bearing funds, and until paid they should bear interest. I contend that items 1 and 4—if the committee sees fit to divide this bill, to make an appropriation for this part that is conceded and to refer the rest to the Court of Claims; but, whatever you do with the rest, as to items 1 and 4 I want to ask that interest be allowed on them from July 2, 1906, until paid, not for the same reason that I want interest on the other items but for the additional reason that these items belong to interest-bearing funds that were put into the hands of the United States, and the Secretary was directed by the decree itself to so place these funds.

Mr. Konop. Your contention is that because the Secretary of the Interior had the money placed to his credit on July 2, 1906, and did not place it to the credit of the Cherokee Indians in the Treasury of the United States until March 15, 1910, that the United States Government should pay interest from July 2, 1906, to March 15, 1910, because it was not credited on the books of the Treasury to the Cherokee Tribe of Indians?

Mr. Boudinot. That is my contention. In the case of Indians, the Secretary of the Interior is the United States, he is our trustee.

Mr. Konop. Supposing that this fund was in the hands of the Secretary of the Interior and there was no provision made in any agreement relating to interest, is there not some general law whereby the trust funds of the Indians bear interest?

Mr. Boudinot. Yes, sir; at the rate of 5 per cent.

Mr. HASTINGS. Five per cent. I think it is.

Mr. BOUDINOT. Yes, sir.

Mr. HASTINGS. That is the basis of his contention. All of these trust funds of the Cherokees, in whatever fund, bear interest at the rate of 5 per cent.

Mr. KONOP. Under the general law?

Mr. HASTINGS. Yes, sir.

Mr. KONOP. Not under any agreement with the Cherokee Indians?

Mr. BOUDINOT. No; even if there had not been that treaty.

Mr. KONOP. If there was no treaty at all referring to interest, as a general proposition, these funds of the Indians that are in the hands of the Secretary of the Interior or in the Treasury of the United States bear interest at the rate of 5 per cent?

Mr. BOUDINOT. Yes, sir; as a general proposition. As to items 1 and 4, that general law would undoubtedly apply, because they belong to these two interest-bearing funds, the school fund and the national fund.

Mr. HASTINGS. Did not this agreement that was the basis of this suit in 1891, when the Cherokees sold this Outlet, provide that they should pay interest to the date that the money was credited to the various funds?

Mr. BOUDINOT. Yes, sir; that is a special law. My position is that the special law applied to these particular funds and would supersede any general law.

Mr. HASTINGS. And the general law also provided for it?

Mr. BOUDINOT. Yes, sir; as to items 1 and 4.

Mr. KONOP. Does not the Secretary of the Interior at the end of each year add to the trust-bearing funds of the Indians interest at 5 per cent, and in that way enhance the funds to the amount of the interest?

Mr. BOUDINOT. He should do it.

Mr. HASTINGS. That is your contention?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. Does he not do it?

Mr. BOUDINOT. The reason stated in this letter to me is that these funds were not placed to the credit of this interest-bearing fund until May 26, 1910.

Mr. HASTINGS. As I understand Mr. Boudinot's contention, it was the duty of the Secretary of the Interior to immediately place these several amounts to the credit of the various funds as he was directed to do, and that the funds should bear interest until he did do it.

Mr. KONOP. It would seem to me that they would bear interest whether credited to the fund or not credited to the fund. As a general proposition, if the Secretary of the Interior had on hand, say, a million dollars belonging to any tribe of Indians, whether or not he put it to the credit of the fund of those Indians, it would bear interest.

Mr. TILLMAN. The Indians would not have possession.

Mr. KONOP. It would be in the possession of a Government official.

Mr. BOUDINOT. I have discussed that in a little memorandum which I have prepared and which I will file with the committee.

Mr. KONOP. Are these Indians on a reservation?

Mr. BOUDINOT. No; we are a part of the State of Oklahoma now.

Mr. KONOP. You have all been allotted?

Mr. BOUDINOT. Yes, sir: all of us.

Mr. KONOP. Do all of the Indians have patents in fee or trust patents to their estates?

Mr. BOUDINOT. They have actual deeds from the Government.

Mr. KONOP. All of them?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. They are citizens of the State of Oklahoma.

Mr. HASTINGS. Yes, sir. They were made citizens by the act of March 3, 1901, long before Oklahoma was admitted. So when Oklahoma came into the Union they were all citizens of the State of Oklahoma.

Mr. KONOP. Do they vote?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. And they all take care of their own property?

Mr. BOUDINOT. Yes, sir. A certain class, some full-blooded Indians are under supervision as to certain of their property.

Mr. KONOP. Under the guardianship of the Secretary?

Mr. BOUDINOT. Yes, sir.

Mr. HASTINGS. An Indian on the roll as a half blood is known as a restricted Indian, and the Secretary of the Interior assumes certain supervision over their land and over the money which he holds, not over the money which they themselves have. For instance, a half-blood Indian can not lease or otherwise dispose of or encumber his homestead, and the Secretary supervises the disbursement of any fund which the Secretary has to the credit of that particular Indian. That is the difference.

Mr. KONOP. The Secretary in his letter of November 18, 1916, to Mr. Boudinot says:

From the books of the Indian Office it appears that the sum of \$4,972,992.04, appropriated by the deficiency act approved June 30, 1906 (34 Stats. L., 664), which amount included \$1,134,248.23 as principal and \$3,838,743.81 as interest, was credited to the Cherokee Nation on July 2, 1906, under the title "Judgment, Court of Claims, Cherokee Nation." It appears that there was also credited to the Cherokee Nation under said heading the sum of \$161,324.94 by Treasury warrant No. 58, dated April 19, 1910, said amount being additional interest at 5 per cent per annum on \$1,111,284.70, item No. 2 of the judgment of the Court of Claims of May 18, 1905, appropriated by the deficiency act of March 4, 1909 (35 Stats. L., 938). (See Comptroller's decision of Apr. 2, 1910.)

From this it appears that interest has been added from July 2, 1906, to April 19, 1910?

Mr. BOUDINOT. I will explain that. Under the act of March 4, 1909, and which is found in 35 Stats. L., 938, 939, at the request of the Court of Claims Congress provided that interest on item 2 should be carried up to such time as the roll of the beneficiaries entitled to receive the money should be approved by the Court of Claims. That date turned out to be March 15, 1910. Under that law the comptroller made a second decision which is dated April 2, 1910, rescinding the decision under which the amount had been paid in 1906, and then holding that the total sum to be paid the Cherokees under the judgment with interest was \$1,111,284.70, with interest from June 12, 1838, to March 15, 1910. That \$161,000 in interest represents the difference between the kind of calculation the United States made finally and the kind that was made in 1906, when this large amount was paid to the Secretary. It is simply

a matter of bookkeeping and was based on the construction placed on the act of 1909 by the comptroller. Our contention is that by the act of 1909 item 2 being a concrete liquidated amount in the Treasury and known to be such by Congress when they directed that interest on item 2 be carried up to this time Congress meant to pay interest on the fund in the Treasury. That is the \$4,000,000 fund. That is what the bill provides for. The comptroller did not take that view of it.

Mr. HASTINGS. And you ask to go to the court on that proposition?

Mr. BOUDINOT. On that proposition the Secretary has recommended that I go to court.

Mr. KONOP. That is provided in the bill?

Mr. HASTINGS. Yes, sir.

Mr. BOUDINOT. Not in this bill, but the Secretary advises it.

Mr. HASTINGS. That is what I mean.

Mr. BOUDINOT. As to the interest since 1902 the Secretary has recommended that the matter be referred to the Court of Claims.

Mr. KONOP. I am not clear on this item No. 2 from the statement in this letter. This part of the letter which states:

From the books of the Indian Office it appear that the sum of \$4,972,992.04, appropriated by the deficiency act approved June 30, 1906 (34 Stats. L., 664), which amount included \$1,134,248.23 as principal, and \$3,838,743.81 as interest, was credited to the Cherokee Nation on July 2, 1906, under the title "Judgment, Court of Claims, Cherokee Nation."

That is absolutely true?

Mr. BOUDINOT. Yes, sir; that is correct.

Mr. KONOP. He says further:

It appears that there was also credited to the Cherokee Nation under said heading the sum of \$161,324.92 by Treasury warrant No. 58, dated April 19, 1910, said amount being additional interest at 5 per cent per annum on \$1,111,284.70.

Where do you get that \$1,111,284.70?

Mr. BOUDINOT. That is the original principal. That is a matter of bookkeeping. They had this statement made and had the amount entered on their books and when they restated the interest they computed it on another basis in 1910 and that made that difference.

Mr. KONOP. I see what your contention is. They computed the interest on the original amount from June 12, 1838, until April 19, 1910?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. That is where the additional \$161,324.92 comes in?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. Your contention, however, is that the interest from July 2, 1906, should have been paid at 5 per cent on the sum of \$4,972,992.04, which was the fund placed to the credit of the Cherokee Indians?

Mr. BOUDINOT. That is my contention exactly.

Mr. KONOP. What is the difference in the amount that you claim?

Mr. BOUDINOT. The difference is \$603,000.

Mr. KONOP. And what does your interest figure, eight hundred and some odd thousand dollars?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. And they figure \$161,000?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. They figure on the original principal and you figure on the amount which was placed to the credit of these Indians on July 2, 1906?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. Would this bill as now written authorize the payment of interest on the sum credited to the Indians July 2, 1906?

Mr. BOUDINOT. Yes, sir. It is also stated by the comptroller.

Mr. TILLMAN. What excuse did they give for figuring as they have and not taking your view?

Mr. BOUDINOT. It was only a difference of opinion as to the law.

Mr. TILLMAN. Did they give you their reason for figuring that way?

Mr. BOUDINOT. They never have told me in writing or informally, or by word of mouth, that they did not believe that this interest should be paid. I have attempted to get their idea, just as you have asked me now.

Mr. TILLMAN. They give interest to the amount of \$161,000 and no more?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. The way the court has item No. 2 is \$1,111,284.70, with interest thereon at the rate of 5 per cent from June 12, 1838, to date of payment. What do you consider the date of payment?

Mr. BOUDINOT. July 2, 1906.

Mr. KONOP. When the money was placed to the credit of the Cherokee Indians with the Secretary of the Interior?

Mr. BOUDINOT. Yes, sir. That was the date of payment, and then the fund came under the operation of this other law.

Mr. KONOP. The general law of 5 per cent interest?

Mr. BOUDINOT. Yes, sir; authorizing the payment of 5 per cent interest.

Mr. KONOP. Have there been per capita payments made to the Indians from this fund since?

Mr. BOUDINOT. In 1910, that is the date of this \$603,000 balance, they paid \$4,105,000 to the Cherokees, presumably the whole balance according to their way of calculating the interest. These amounts, items 1, 2, 3, and 4, every one of them were due, principals plus interest, under the agreement of 1891, March 4, 1895. That has been found and stated positively and emphatically by the Court of Claims and on appeal by the Supreme Court of the United States in so many words. Those courts found that the money was a part of the purchase price of lands; that the United States got the lands and kept the money; that the money was due at the session of Congress which convened in December, 1894, and that session expired by limitation March 4, 1895. The money being due on that contract, the claim of the Cherokees, of which this bill is a compromise, was for the amounts, principals and interest, that were due March 4, 1895, with interest thereon at 5 per centum per annum until paid, under the clause in the agreement which I quoted awhile ago, which is a special law, even if we do not consider the general law. "So long as the money shall stay in the Treasury it shall bear interest at the rate of 5 per cent payable semiannually." That is in the sixth subdivision of the agreement. The difference between such interest and

that proposed in the bill as to item 2 would be about \$2,000,000. I have taken up that phase with the department and, as in this other case, they have never by letter or in any other way given me any reason why that would not be correct interpretation of the agreement.

Mr. KONOP. Let me ask you another question. When this money was credited to the Cherokee Nation on July 2, 1906, and placed in the hands of the Secretary of the Interior, I suppose that the Secretary of the Interior immediately proceeded to make a roll of these Indians and to make arrangements for the payment of this sum of money to the Indians, and I suppose that it took from July 2, 1906, to March 15, 1910, to make the arrangements for the payment of this sum of more than four million dollars placed to the credit of the Indians by the Secretary of the Interior.

Mr. BORDINOT. Yes, sir; the Secretary of the Interior was directed to make this roll.

Mr. KONOP. Do you think the United States Government ought to pay interest when it is given possession of a sum of money to distribute among the Indians, and it starts to go to work to provide an agency for the distribution of this money and to make up the roll, that the United States ought to pay interest on the money until it is actually paid?

Mr. BORDINOT. If they contracted to do so, I think they should, especially in view of the fact that we paid all of the expenses.

Mr. KONOP. Where do you claim that they were under contract?

Mr. BORDINOT. In the contract under which the money was due. "So long as the money remained in the Treasury of the United States after the agreement became effective, it shall bear interest at the rate of 5 per cent per annum, payable semiannually."

Mr. DEMPSEY. And this provided for the purchase of the land?

Mr. BORDINOT. Yes, sir. The judgment was based upon the agreement for the amounts found due, in the account rendered thereunder by the United States. The main issue was whether the money found due in the account was only due under the old treaties and laws, as stated in the account, or due and payable under the agreement of 1891.

Mr. KONOP. Did not the process of the distribution of this money begin July 2, 1906, when this money was put to the credit of the Secretary of the Interior: did they not begin to make a roll and to provide agents for the distribution of the money?

Mr. BORDINOT. Yes, sir.

Mr. KONOP. Suppose a court renders a judgment for \$5,000 in favor, say, of some heirs. In an ordinary civil procedure the administrator or the executor, whatever he may be, immediately after the rendition of the judgment proceeds to make arrangements to pay the money, and it takes six months before he can settle up with the heirs—find out where they are. Do you think there should be an interest charge for the six months?

Mr. BORDINOT. I would not like to say positively as to that.

Mr. DEMPSEY. I think the court would charge an executor interest.

Mr. KONOP. I do not think so.

Mr. DEMPSEY. I will tell you why I think an executor is bound to get interest where it is the custom to pay interest. I think that an executor can not sit down and say: "I may have to pay this money out to-morrow and so I will deposit it in a noninterest-bearing

account," when he can go to some bank, and that means any good bank, and they will make a contract and stamp his book to allow him interest, provided the money remains there a given time. If he actually does distribute the money in less than the stated time, of course he would not be charged with interest, because the bank would not pay him interest under the contract and therefore he has only done that which a diligent representative should do, he has made an advantageous contract for the estate. He has the option of making either an advantageous or a disadvantageous contract. If he makes an advantageous contract, and it turns out that the money does remain there, then why should he not be charged with interest. That is only reasonable diligence.

Mr. TILLMAN. I think there is a distinction between that and the Government. I do not think that the Government should be compelled to look for a place in order to get interest for the benefit of the Indians or others.

Mr. DEMPSEY. Is it not a fact that the Government does carry its funds in interest-bearing depositories throughout the United States, and you might find on investigation that these particular funds were in all human probability deposited at interest, and that interest was actually paid?

Mr. TILLMAN. I do not think so. I think that he must rely upon his agreement.

Mr. DEMPSEY. If you go into any city in the country, go right down town here, you will find on their windows, on their bank books, and on their literature the statement, "Government depository."

Mr. TILLMAN. I think that is a recent arrangement. I think the Government has been depositing money and charging no interest whatever to the banks to assist them over hard times.

Mr. BOUDINOT. That was not the custom at the time that I am asking for interest here. I rely upon the agreement. Those questions can probably be best thrashed out before a court after all. Mr. Hastings has introduced this bill for me by way of a compromise. I have notified the Commissioner of Indian Affairs of my intention in this matter. That if they saw fit to settle these claims now on the basis provided in this bill we would acquit the United States of all future payments on account of these claims. The error that is admitted by the comptroller and the Secretary in item 4 ought to be corrected. I would suggest and ask that you separate the two parts of the bill and introduce one bill and let it be an appropriation bill, as to items 1 and 4. The other one would be a different kind of a bill, one to confer jurisdiction.

Mr. KONOP. To confer jurisdiction on the court?

Mr. BOUDINOT. Yes, sir.

Mr. KONOP. It looks to me that probably the Secretary of Interior with his Indian Bureau agents was about as diligent as they usually are in making up a roll and in paying out any money they may have. They took four years in this case.

Mr. BOUDINOT. It was a difficult thing to do. There are other matters that do not relate to this claim.

In regard to item 1 and item 4 the Cherokee school fund and the national fund, both trust funds bearing interest at 5 per cent. is there

anything that you would like to ask about them? I want interest on both of those funds.

Mr. KONOP. And the correction made from 1903 to 1893?

Mr. BOUDINOT. In item 4; yes, sir.

Mr. KONOP. Can you submit to the committee a draft of a bill?

Mr. BOUDINOT. I have one. I have prepared a draft that I think would cover it.

Mr. HASTINGS. Mr. Boudinot has prepared two bills.

Mr. BOUDINOT. That [exhibiting] is the bill for the appropriation. I thought I would carry out in this bill for the appropriation as near as might be the exact figures of the amounts that will be appropriated under the bill or so much thereof as might be necessary. The recommendation by the Secretary of the Interior is in general terms and just says interest from such a date to such a date. Congress might want to know how much that would amount to, and I have reduced it to figures.

Mr. DEMPSEY. Would it not be advisable to keep just as near to the bill as proposed by the department as possible?

Mr. HASTINGS. We will see where it varies from that. I want him to read it for such criticism and suggestion as the committee may desire to make. He is going to separate it, so if you make an appropriation you will have one bill for an appropriation and the other to refer to the court—to appropriate the amount that is conceded, as I understand it.

Mr. BOUDINOT. This is the proposed bill:

A BILL Providing for the payment of certain interest on the judgment of the Court of Claims of May eighteenth, nineteen hundred and five, in favor of the Cherokee Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the general deficiency appropriation act of June thirtieth, nineteen hundred and six (Thirty-fourth Statutes at Large, page six hundred and sixty-four), and the act of Congress of March fourth, nineteen hundred and nine (Thirty-fifth Statutes at Large, pages nine hundred and thirty-eight and nine hundred and thirty-nine), construing same, so far as the said acts provide for the payment of the judgment of the Court of Claims of May eighteenth, nineteen hundred and five, in favor of the Cherokee Nation, be, and the same hereby are, so amended as to allow interest to be paid as follows: At five per centum per annum on the amount of the fund arising from item one of said judgment, as such amount was determined and paid to the Secretary of the Interior July second, nineteen hundred and six, to be by him credited to the principal of the Cherokee school fund; that is to say, on the sum of \$11,520.46, from July second, nineteen hundred and six, up to and including May twenty-sixth, nineteen hundred and ten, and the sum of \$2,145.67, or so much thereof as may be necessary, is hereby appropriated to pay the same; at five per centum per annum on the original principal sum of item four of said judgment, \$20,406.25, from July first, eighteen hundred and ninety-three, up to July first, nineteen hundred and three, and at five per centum per annum on the amount of the fund arising from said item four as hereby increased, said amount to be determined according to the decision of the Comptroller of the Treasury July eleventh, nineteen hundred and six, relating to said funds, from July second, nineteen hundred and six, to the date of the passage of this act; and the sum of \$25,000, or so much thereof as may be necessary to pay said interest is hereby appropriated, and the Secretary of the Treasury is hereby authorized and directed to pay the same to Frank J. Boudinot, attorney at law, for his services and expenses heretofore performed and incurred in behalf of the Cherokee people.

If you will just follow the recommendation of the department—have you the letter from the department?

Mr. Koxop. Yes.

Mr. DEMPSEY. We will follow this [indicating].

Mr. Koxop. That language, "pay the sum"—you mentioned that this would be put into this school fund.

Mr. BOUDINOT. Yes; it would be put into the school fund.

Mr. Koxop. There was nothing for the Secretary of the Interior to do but to credit that money to the school fund.

Mr. BOUDINOT. Just transfer it from one pocket to another; but he did not do it until May 26, 1910.

Mr. Koxop. There was no necessity for going to any trouble in making up a roll with reference to this fund, was there?

Mr. BOUDINOT. No, sir. The court directed the Secretary to place the fund on the proper books and credit the amount to the principal of the Cherokee school fund.

Mr. DEMPSEY. Just how much was that?

Mr. BOUDINOT. It was \$11,520.46. The interest amounts to \$2,145.67.

Mr. Koxop (reading from letter of comptroller):

Item 1. At 5 per cent on original principal from February 27, 1819, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906.

Item 2. At 5 per cent on original principal from June 12, 1838, to March 15, 1910.

Item 3. At 5 per cent on original principal from January 1, 1874, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906.

Item 4. At 5 per cent on original principal from July 1, 1903, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906.

Mr. Koxop. That is—at least substantially—what is contained in the letter to the chairman of this committee, under date of June 29, 1916, from the Secretary of the Interior.

Mr. BOUDINOT. Yes. As to item 1, that \$2,145.67, or so much thereof as may be necessary, is to be appropriated, if the committee agrees to pay the same. Then at 5 per cent per annum on the original principal of item 4 of said judgment, \$20,406.25, from July 1, 1893, up to July 1, 1903, and at 5 per cent per annum on the amount of the fund arising from said item 4 as increased.

Mr. Koxop. You say "To pay the same." Pay it to whom?

Mr. BOUDINOT. I was about to get to that. It is in the bill. The amount is to be determined according to the decision of the Comptroller of the Treasury of July 11, 1906, relating to said funds, from July 2, 1906, to the date of the passage of this act. It also provides for the payment of \$25,000, or so much thereof as may be necessary to pay that interest. Now, to answer your question, it reads:

To pay the same to Frank J. Boudinot, attorney at law, for his services and expenses heretofore performed and incurred in behalf of the Cherokee people.

I want to submit certain resolutions passed by the Cherokees, and approved by the chief of the Cherokee Nation, about this, and also I desire to ask the committee to hear Senator Owen make a statement as to the merits of the proposition to pay that amount to me.

Mr. Koxop. You want this interest paid to you, do you?

Mr. BOUDINOT. That is, item 4, yes.

Mr. DEMPSEY. What is the amount?

Mr. BOUDINOT. The amount will probably be—it is difficult to get at it—about \$16,911. It could possibly be twenty-two and some odd thousand dollars up to the date the money was in the Treasury. It is not there now. It could not be over \$25,000.

Mr. TILLMAN. And it could be somewhere between the two sums mentioned by you, could it not?

Mr. BOUDINOT. Yes.

Mr. DEMPSEY. Depending upon the amounts?

Mr. BOUDINOT. Yes.

Mr. DEMPSEY. This bill is not opposed by the department, is it?

Mr. BOUDINOT. No.

Mr. DEMPSEY. That item you are now considering differs from the bill as proposed by the department as to the items for which interest was reckoned and the rates at which it shall be computed?

Mr. BOUDINOT. No—not the rates. The only difference is that it provides for interest from July, 1893, to July, 1903. And the amount of the fund as increased to be placed to the credit of the principal of the Cherokee school fund—the trust fund as of July 2, 1906, and interest paid to date.

Mr. KXOR. I can see how items 1 and 4 will be all right. As to items 2 and 3, you would want them submitted to the Court of Claims.

Mr. BOUDINOT. They should be submitted to the Court of Claims, I think, yes.

Mr. KXOR. For determination as to whether the interest should be computed on the principal to 1910 or on the amount of four million and some odd thousand dollars to July 2, 1906—to March 15, 1910.

Mr. BOUDINOT. Or up until payment.

Mr. KXOR. Yes.

Mr. BOUDINOT. I would want to ask the committee to make that bill so that the Cherokees might come into court and get all such interest as may be authorized by any law or contract on the particular fund—only on that particular fund.

Mr. KXOR. Is item 3 in the same position as item 2?

Mr. BOUDINOT. No.

Mr. KXOR. It is not?

Mr. BOUDINOT. No; it is not. If I had more time I could show that item 3 belonged to the Cherokee national school and orphan funds—all interest-bearing trust funds. That could be thrashed out in court. This item, being the proceeds of certain lands in southern Kansas, was due under the treaty of 1866.

Mr. KXOR. Have you prepared a bill for submitting items 2 and 3 to the Court of Claims?

Mr. BOUDINOT. I have.

Mr. HASTINGS. Read that to the committee.

(The bill referred to was read to the committee, and appears in full at the close of Mr. Boudinot's remarks.)

Mr. BOUDINOT. That differs in some respects, as the committee will see, from the bills proposed here.

Mr. DEMPSEY. The important differences are that the fee shall be such as the court shall decide is reasonable, and shall not be in excess of the amount stipulated in the approved contract—shall not be more than 10 per cent: whereas the bill provides for 15 per cent. Is that right?

Mr. BOUDINOT. That is correct; yes.

Mr. DEMPSEY. As I understand it, you will provide in your proposed bill for the payment of items 4 and 1 instead of referring one to the Court of Claims.

Mr. KONOP. Items 2 and 3 are referred to the Court of Claims and 1 and 4 are to be appropriated for directly and paid to you. Is that correct?

Mr. BOUDINOT. Not 1, but 4—in compliance with the resolution I have here from the Cherokees approved by the principal chief of the Cherokee Nation. It relates solely to item 4.

Mr. KONOP. Have you a contract with the Cherokee Nation with reference to the prosecution of the proposed cases—items 2 and 3?

Mr. BOUDINOT. Yes; I have that.

Mr. KONOP. Now state to the reporter what papers you want to have incorporated in the record and indicate to what items they refer.

Mr. BOUDINOT. Very well.

Mr. TILLMAN. In the proposed draft of the bill to confer jurisdiction upon the Court of Claims reference is made to items 2 and 3 of the judgment of the Court of Claims.

Mr. BOUDINOT. Yes; that is what I want to go into the record first. It is a bill to confer jurisdiction upon the Court of Claims, with right of appeal to the Supreme Court of the United States, to hear, consider, and determine and enter final judgment on the claim of the Cherokee Nation against the United States for interest alleged to be owing and unpaid from the United States to the Cherokee Nation on the funds arising from the judgment of the Court of Claims of May 18, 1905, in favor of the Cherokee Nation, and for other purposes.

Mr. KONOP. To what items does that refer?

Mr. BOUDINOT. That refers to items 2 and 3 of the judgment.

Mr. KONOP. What is your next document?

Mr. BOUDINOT. The next document I desire to have inserted is a draft of a bill providing for the payment of certain interest on the judgment of the Court of Claims of May 18, 1905, in favor of the Cherokee Nation, and for other purposes. That refers to items 1 and 4—of the judgment of the Court of Claims.

Mr. KONOP. It provides for the payment of interest on items 1 and 4?

Mr. BOUDINOT. Yes.

Mr. KONOP. What is your next paper which you desire inserted?

Mr. BOUDINOT. No. 3 is a contract between W. C. Rogers, of Skiatook, State of Oklahoma, principal chief of the Cherokee Nation, and Frank J. Boudinot, of Fort Gibson, State of Oklahoma, attorney at law, for the collection from the United States of certain moneys claimed to be due to the Cherokees on account of the funds arising from items 1, 2, 3, and 4 of the judgment of the Court of Claims of May 18, 1905.

Mr. KONOP. To what items does that refer?

Mr. BOUDINOT. That refers to all four items.

Mr. DEMPSEY. It refers to all four of the items.

Mr. BOUDINOT. Yes. The next item is a resolution adopted by the Cherokees praying that certain moneys be appropriated by Congress for these purposes.

Mr. HASTINGS. That resolution was adopted by the Society of the Cherokees?

Mr. BOUDINOT. Yes; and was approved by the principal chief of the Cherokees. The next document is a power of attorney from the principal chief of the Cherokee Nation to Frank J. Boudinot to receive and receipt for any sum or sums of money that may be owing to the Cherokee Nation from the United States or that may hereafter become due and payable to said nation by appropriation act of Congress or otherwise on account of item 4. I would ask that this power of attorney and the contracts be copied and the originals returned to me.

Mr. TILLMAN. Yes; that ought to be done.

Mr. KONOP. That will be all right. The reporter will do that. What is your next document, or have you any more?

Mr. BOUDINOT. Yes; I have here a letter from the Assistant Commissioner of Indian Affairs, Mr. E. B. Meritt, dated November 18, 1916, addressed to Frank J. Boudinot, attorney at law, Fort Gibson, Okla., in reference to certain items of Cherokee tribal funds, and especially as to the disposition of such funds.

Mr. KONOP. Is that all?

Mr. BOUDINOT. I believe that is all; yes. I have some printed pamphlets, one of which I should like to submit, as it contains the views of Frank J. Boudinot on the merits of the claims.

Mr. KONOP. Are these pamphlets all the same?

Mr. BOUDINOT. Yes.

Mr. KONOP. One of them may go into the record.

Mr. BOUDINOT. Thank you.

Mr. KONOP. Mr. Reporter, you may also include a letter I have here—

Mr. BOUDINOT. Pardon me a moment, Mr. Chairman. I would like to state what this last document is. It is a memorial of the Cherokees in support of H. R. No. 6444, Sixty-fourth Congress, first session. Pardon my interruption.

Mr. KONOP. Certainly. This is a letter from the Secretary of the Interior to the chairman of the Committee on Indian Affairs, dated June 29, 1916; also a letter from the Comptroller of the Treasury to the Secretary of the Treasury, dated May 25, 1916.

Mr. BOUDINOT. With reference to these two contracts and my connection with this matter, I had some feeling of diffidence in saying much about myself. For this reason I have asked the committee to hear Senator Owen.

Mr. KONOP. We shall be very glad to hear from the Senator.

A BILL To confer jurisdiction upon the Court of Claims, with right of appeal to the Supreme Court of the United States, to hear, consider, and determine, and render final judgment on the claim of the Cherokee Nation against the United States for interest alleged to be owing and unpaid from the United States to the Cherokee Nation on the funds arising from the judgment of the Court of Claims of May eighteenth, nineteen hundred and five, in favor of the Cherokee Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That jurisdiction is hereby conferred upon the Court of Claims to hear, consider, and determine the claim of the Cherokee Nation against the United States for interest, in addition to all other interest heretofore allowed and paid, alleged to be owing from the United States to the Cherokee Nation on the funds arising from the judgment of the

Court of Claims of May eighteenth, nineteen hundred and five (Fortieth Court of Claims Reports, page two hundred and fifty-two), in favor of the Cherokee Nation. The said court is authorized, empowered, and directed to carefully examine all laws, treaties, or agreements, and especially the agreement between the United States and the Cherokee Nation of December nineteenth, eighteen hundred and ninety-one, ratified by the United States March third, eighteen hundred and ninety-three (Twenty-seventh Statutes at Large, page six hundred and forty, section ten), in any manner affecting or relating to the question of interest on said funds, as the same shall be brought to the attention of the court by the Cherokee Nation under this act. And if it shall be found that under any of the said treaties, laws, or agreements interest on one or more of the said funds, either in whole or in part, has not been paid and is rightfully owing from the United States to the Cherokee Nation the court shall render final judgment therefor against the United States and in favor of the Cherokee Nation, either party to have the right of appeal to the Supreme Court of the United States as in other cases. The said claim shall be presented within one year after the passage of this act by petition in the Court of Claims by the Cherokee Nation as plaintiff against the United States as defendant, and the petition shall be verified by the attorney employed, to prosecute said claim, by the Cherokee Nation acting through its principal chief. A copy of the petition shall be served upon the Attorney General of the United States, and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States in said cause. The law and practice and rules of procedure in said courts shall be the practice and law in this case. The attorney for the Cherokee Nation shall be paid the fee as stipulated in his contract of employment, not to exceed fifteen per centum on the gross amount, if any, that shall be recovered for said Cherokee Nation. The amounts recovered for said Cherokee Nation, if any, except the fee to said attorney, shall be disbursed under the supervision of the Secretary of the Interior to the parties entitled thereto in the manner prescribed by the Court of Claims.

RESOLUTION NO. 1, ASKING THAT CERTAIN MONEY BE APPROPRIATED BY CONGRESS
AND PAID TO ATTORNEY FRANK J. BOUDINOT.

Whereas pursuant to a proposition made to the board of trustees by Frank J. Boudinot, attorney, on the 5th day of January, 1915, to secure from the United States credits to the funds of the Cherokees on account of improper withholding of certain items of interest on certain judgment funds and funds arising from the judgment of the Court of Claims of May 18, 1905, and resolutions of said board of trustees accepting said proposition, dated January 12, 1915, by the efforts of our said attorney, Frank J. Boudinot, a recommendation has been made to Congress by the Secretary of the Interior for the appropriation of a sufficient sum to pay interest on item four of said judgment from July 1, 1893, to July 1, 1903; and

Whereas according to the statement of our said attorney, he has, during the last seven years, expended out of his own funds many thousands of dollars necessarily while engaged in defending the interests of the Cherokees at Washington, D. C., and it is believed that it will be for the best interests of all Cherokees to devote the sum recommended for appropriation toward reimbursing our said attorney for his expenses, and to enable him to more expeditiously prosecute the claims of the Cherokees and defend their interests: Now, therefore, be it

Resolved by the Advisory Committee of Incorporated Keeloowah Society, That the Congress of the United States hereby is memorialized to promptly appropriate the interest which has been heretofore withheld on item four of the judgment of the Court of Claims of May 11, 1905, and to direct the proceeds of said appropriation to be disposed of as follows: First, to pay such sum as may be justly due our attorneys for making the collection of said money; second, to pay the balance to our said attorney, Frank J. Boudinot, which payment shall be in full for his expenses and services heretofore incurred and performed in behalf of the Cherokees, excepting only his expenses and services in connection with or growing out of the claim against the United

States for interest on the funds arising from items 1, 2, and 3 of said judgment of May 18, 1905.

Passed the advisory committee by unanimous vote this 15th of August, 1916.

R. R. MEIGS,
Chairman Advisory Committee.
JAMES W. DUNCAN,
Clerk Advisory Committee.

Approved this August 15, 1916.

RICH'D M. WOLF, *President.*
(Signed in Indian characters: Price Cochran, first vice president.)
(Signed in Indian characters: Bill Mankiller, second vice president.)

Attest:

[SEAL.]

JAMES W. DUNCAN, *Secretary.*
INCORPORATED KEETOOWAH SOCIETY.

Approved this November 20, 1916.

W. C. ROGERS,
Principal Chief of the Cherokee Nation.

CONTRACT by and between W. C. Rogers, of Skiatook, State of Oklahoma, principal chief of the Cherokee Nation, and Frank J. Boudinot of Fort Gibson, State of Oklahoma, attorney at law, for the collection from the United States of certain moneys claimed to be due the Cherokees on account of the funds arising from items 1, 2, 3, and 4 of the judgment of the Court of Claims of May 18, 1905.

Know all men by these presents. That this contract, made and entered into this the 20th day of November, 1916, is made by and between the Cherokee Nation, acting through its principal chief, W. C. Rogers, whose occupation is that of principal chief of the Cherokee Nation, and whose residence is in the town of Skiatook, in the State of Oklahoma, party of the first part, and Frank J. Boudinot, whose occupation is that of attorney at law, and whose residence is in the town of Fort Gibson, in the State of Oklahoma, party of the second part.

The purpose for which this contract is made is to secure the services of the party of the second part as attorney and counselor at law for the Cherokee Nation. The special thing to be done under this contract by the party of the second part is to represent said Nation as attorney before the authorities of the United States Government (the committees of Congress, the executive departments, and the courts) in the matter hereinafter mentioned—that is to say, in the prosecution of the claim of the Cherokee Nation against the United States which grew out of the agreement between the Cherokee Nation and the United States for the purchase of what is known as the Cherokee Outlet, the judgment of the Court of Claims of May 18, 1905, on said agreement and acts of Congress, laws of the United States, applicable thereto.

This contract is to run from the 20th day of November, 1916, until the 4th day of March, 1920: *Provided, however,* That if the questions and matters involved shall be then pending in the courts or other tribunal for final determination, then and in that event this contract shall be and remain in full force and effect until final determination of the same.

The rate per centum of fee to be paid to party of the second part in full for his services under this contract shall be fifteen per centum upon the amount collected, the disposition to be made of the money when collected under this contract shall be as provided by existing law or as may be hereafter directed by Congress or by the court having jurisdiction of same, except the fee above provided; the compensation aforesaid to be paid to the said party of the second part by the proper officers of the United States shall be deducted from the amount recovered, and by the said officers paid direct to the said party of the second part.

No contingent matter or condition, except as herein set forth, constitutes any part of this contract; and by virtue of and under the authority of said Cherokee Nation, acting through its principal chief, W. C. Rogers, the party of the first part has employed, and by these presents doth employ, the party of the first part, to represent said Cherokee Nation before the authorities of the United States Government (the committees of Congress, the executive departments, and the courts) in the city of Washington, District of Columbia, as attorney of said

nation in the prosecution to a final determination and payment of the said claim, for and during the time aforesaid and for the compensation aforesaid, hereby giving to said attorney full power and authority in the premises to do and perform all things whatsoever that may be necessary and lawful in the prosecution of the said claim and for the securing payment thereof by the United States; to sign and execute all papers that may be required on behalf of said nation, hereby ratifying and confirming all the lawful acts of said attorney done in pursuance of the authority of this contract.

The party of the second part hereby accepts the employment herein set forth and provided for upon the terms and conditions specified, and he will, to the best of his ability, do and perform the services stipulated and required by this contract.

Witness our hands and seals this the 20th day of November, 1916, and executed in triplicate.

W. C. ROGERS,

Principal Chief of the Cherokee Nation, party of the first part.

FRANK J. BOUDINOT,

Attorney at law, party of the second part.

UNITED STATES OF AMERICA, STATE OF OKLAHOMA,

County of Tulsa, ss:

I, Conn Linn, judge of the district court of the twenty-first judicial district of Oklahoma, which is a court of record, do hereby certify that the within and foregoing contract was executed before me on this the 20th day of November, 1916, by W. C. Rogers, principal chief of the Cherokee Nation, and acting for said nation, party of the first part, in my presence; that the interested parties therein are the Cherokee Nation, which is represented by the said W. C. Rogers, who is the principal chief of said nation and who resides in the town of Skiatook, Tulsa County, State of Oklahoma, and Frank J. Boudinot, attorney at law, who resides at Fort Gibson, Muskogee County, State of Oklahoma, as stated to me at the time; that the parties present were the said W. C. Rogers and Frank J. Boudinot; that the source and extent of the authority claimed by the said contracting party to make said contract was and is the right of the Cherokee Nation, acting through its principal chief, so to contract; and that the said contract was signed and executed for the purpose therein stated and set forth, by the said W. C. Rogers, who is personally known to me and who appeared before me at the courthouse in the city of Tulsa, in the county of Tulsa, in the State of Oklahoma.

CONN LINN,

Judge District Court, Tulsa County, Okla.

Attest:

[SEAL.]

FRANK INGRAHAM, *Court Clerk.*

By R. L. LAWS, *Deputy.*

UNITED STATES OF AMERICA, STATE OF OKLAHOMA,

County of Tulsa, ss:

I, Conn Linn, judge of the district court of the twenty-first judicial district of Oklahoma, which is a court of record, do hereby certify that the within and foregoing contract was executed before me on this the 20th day of November, 1916, by Frank J. Boudinot, attorney at law, party of the second part, in my presence; that the interested therein parties are the Cherokee Nation, which is represented by W. C. Rogers, who is the principal chief of said nation and who resides in the town of Skiatook, Tulsa County, State of Oklahoma, and Frank J. Boudinot, attorney at law, who resides in the town of Fort Gibson, Muskogee County, State of Oklahoma, as stated to me at the time; that the parties present were the said Frank J. Boudinot and W. C. Rogers; that the source and extent of the authority claimed by the said contracting party to make said contract was and is the right of the Cherokee Nation, acting through its principal chief, so to contract; and that the said contract was signed and executed for the purpose therein stated and set forth by the said Frank J. Boudinot, who is personally known to me, who appeared before me at courthouse, Tulsa County, State of Oklahoma.

CONN LINN,

Judge District Court, Tulsa County, Okla.

Attest:

[SEAL.]

FRANK INGRAHAM, *Court Clerk.*

By R. L. LAWS, *Deputy.*

Know all men by these presents, That I, W. C. Rogers, principal chief of the Cherokee Nation, do hereby make, constitute, and appoint Frank J. Boudinot, Fort Gibson, Okla., my true and lawful attorney in fact and agent for me and in my name, place, and stead; and in the name, place, and stead of the principal chief of the Cherokee Nation; and in the name, place, and stead of the Cherokee Nation, to receive from the proper officer or officers of the United States Government any sum or sums of money that may be owing to said Cherokee Nation from the United States, or that may hereafter become due and payable to said nation by appropriation act of Congress or otherwise, on account of the fund arising from item 4 of the judgment of the Court of Claims of May 18, 1905, in cause No. 23199, *The Cherokee Nation v. The United States*, or on account of interest on said item 4 or on any part of same.

Hereby giving unto said attorney and agent full power and authority in the premises to do and perform all things whatsoever that may be required to secure payment to him of said money, to sign all papers and receipts that may be required in the name and on behalf of the undersigned principal chief of the Cherokee Nation and in the name of the Cherokee Nation; hereby ratifying and confirming all the lawful acts of said attorney in fact and agent done in pursuance of the authority hereby given.

Witness my hand and seal on this the 20th of November, 1916, at Tulsa, State of Oklahoma.

W. C. ROGERS,

Principal chief of the Cherokee Nation.

I, Frank J. Boudinot, hereby accept the power of attorney and agency above given this 20th day of November, 1916.

FRANK J. BOUDINOT.

STATE OF OKLAHOMA,
County of Tulsa, ss.

Before me, Conn Linn, judge district court, Tulsa County., Okla., in and for said county and State on this the 20th day of November, 1916, personally appeared W. C. Rogers, principal chief of the Cherokee Nation, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto subscribed my name and affixed my official seal at Tulsa, State of Oklahoma, on the day last above written.

CONN LINN,

Judge District Court, Tulsa County, Okla.

Attest:

[Seal.]

FRANK INGRAHAM, *County Clerk.*

By R. L. LAWS, *Deputy.*

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS.

Washington, November 18, 1916.

MR. FRANK J. BOUDINOT,

Attorney at Law, Fort Gibson, Okla.

DEAR SIR: Reference is again made to your letter of September 8, 1916, in which you requested for Cherokee Indians, members of the Keetoowah Society, information relative to certain items of the Cherokee tribal funds, and especially as to the disposition thereof.

From the books of the Indian Office it appears that the sum of \$4,972,992.04, appropriated by the deficiency act approved June 30, 1906 (34 Stats. L., 664), which amount included \$1,134,248.23 as principal, and \$3,838,743.81 as interest, was credited to the Cherokee Nation on July 2, 1906, under the title "Judgment, Court of Claims, Cherokee Nation." It appears that there was also credited to the Cherokee Nation under said heading the sum of \$161,324.92 by Treasury warrant No. 58, dated April 19, 1910, said amount being additional interest at 5 per cent per annum on \$1,111,284.70, item No. 2 of the judgment of the Court of Claims of May 18, 1905, appropriated by the deficiency act of March 4, 1909 (35 Stats. L., 938; see comptroller's decision of Apr. 2, 1910).

It further appears that by certificate of the Auditor for the Interior Department, No. 17264, dated May 26, 1910, the sum of \$33,769.99 was transferred

from the funds carried under the heading above mentioned on account of certain amounts arising under items 1 and 4 of the judgment of the Court of Claims of May 18, 1905, and the act of Congress of June 30, 1906, and that the following credits were correspondingly made, bearing interest at 5 per cent per annum:

| | |
|-----------------------------|-------------|
| Cherokee school fund..... | \$11,174.53 |
| Cherokee national fund..... | 22,595.46 |
| Total..... | 33,769.99 |

It further seems that these amounts under date of May 26, 1910, became merged in the trust funds of the Cherokee Nation, carried under the titles stated, and interest thereon at the rate of 5 per cent per annum was credited by the Government and that there is no way, in view of the merger of the above mentioned items with the principal funds of the Cherokee Nation, of ascertaining the exact dates when particular items were withdrawn from the United States Treasury. The first withdrawals from the Treasury for the payment of warrants and for other expenses subsequent to May 26, 1910, were as follows:

Cherokee national fund: April 18, 1912, to Richard Kessell, requisition No. 1412, \$15,000; April 22, 1912, to Richard Kessell, requisition No. 1437, \$50,000.

Cherokee school fund: October 12, 1912, to Richard Kessell, requisition No. 552, \$95,515.32.

It further appears that the item of \$1,106.24 referred to in your letter is carried on the books of this office under the heading, "Judgment, Court of Claims, Cherokee Nation," and does not bear interest.

Very truly, yours,

E. B. MERITT.

Assistant Commissioner.

E. B. MERITT, *Assistant Commissioner.*

MEMORIAL TO THE CHEROKEES, IN SUPPORT OF H. R. 6444, SIXTY-FOURTH CONGRESS, FIRST SESSION.

To the Senate and House of Representatives of the United States of America in Congress assembled:

By contract and agreement of December 19, 1891, the United States bought from the Cherokees 8,144,682.91 acres of land for certain considerations specifically set forth and enumerated in the contract. (Senate Ex. Doc. No. 56, 52d Cong., 1st sess.; S. Doc. No. 215, 56th Cong., 1st sess., pp. 60-62.)

The said contract was duly ratified by the Cherokees, January 4, 1892 (S. Doc. No. 215, 56th Cong., 1st sess., p. 62), and by act of Congress March 3, 1893 (27 Stat. L., p. 640, sec. 10).

As one of the principal considerations to pass to the Cherokees for relinquishment of their title to said land the United States agreed to—

"Without delay, render to the Cherokee Nation * * * a complete account of moneys due the Cherokee Nation * * * if it shall be found upon such accounting that any sum of money has been * * * withheld, the amount shall be duly appropriated by Congress * * * such appropriation to be made by Congress if then in session, and if not, then at the session immediately following such accounting." (Fourth subdivision of article 2 of agreement as printed in Senate Ex. Doc. No. 56, 52d Cong., 2d sess.; S. Doc. No. 215, 56th Cong., 1st sess., pp. 60-61.)

Another essential item of consideration to pass to the Cherokees from the United States as a part of the purchase price of the land, expressly set forth in the agreement, was the following:

"So long as the money or any part of it shall remain in the Treasury of the United States, after this agreement shall have become effective, such sums so left in the Treasury of the United States shall bear interest at the rate of five per centum per annum payable semiannually: *Provided*, That the United States may at any time pay to said Cherokee Nation, the whole or any part of said sum and thereupon terminate the obligation of the United States in respect to so much thereof as shall be so paid and in respect to any further interest upon the same." (Sixth subdivision of article 2 of the agreement as printed in Senate Ex. Doc. No. 56, 52d Cong., 2d sess.; S. Doc. No. 215, 56th Cong., 1st sess., bottom of p. 50 and top of p. 51.)

The promised account was duly rendered to the Cherokee Nation by the United States, through the Secretary of the Interior, May 21, 1894, and it was formally accepted by the Cherokees, by act of their National Council, December 1, 1894. (House Ex. Doc. No. 182, 53d Cong., 3d sess.)

The account was officially transmitted to Congress by the Secretary of the Interior January 7, 1895, "together with a certified copy of an act of the Cherokee National Council accepting such accounting." (Ibid., p. 1.)

The amounts found due from the United States to the Cherokees in said account were the following, to-wit:

Under the treaty of 1819, \$2,125, with interest from February 27, 1819.

Under the treaty of 1835, \$1,111,284.70, with interest from June 12, 1838.

Under the treaty of 1866, \$432.28, with interest from January 1, 1874.

Under act of Congress March 3, 1893, \$20,406.25, with interest from July 1, 1893. (S. Doc. No. 215, 56th Cong., 1st sess., p. 95.)

With the Cherokee Nation's acceptance of this account, December 1, 1894, the session of Congress at which an appropriation should be made to pay the amounts found due therein became fixed and certain, that is to say, the session that expired March 4, 1895.

"With the Nation's acceptance of the account (Dec. 1, 1894) the session of Congress at which an appropriation should be made became fixed and certain." (202 U. S. Sup. Ct. Repts., p. 123.)

With the expiration of said session of Congress, March 4, 1895, the agreement became fully "effective" within the meaning of that word as used in the sixth subdivision of article 2 thereof (*supra*), relative to the time after which the United States must pay interest on the money, or any part of it, so long as it should remain in the Treasury of the United States.

That is to say, in the account rendered to the Cherokee Nation by the United States, in compliance with the express provisions of the agreement referred to, the United States admitted that they owed the Cherokees certain sums of money as stated in the account (*supra*), under older treaties and laws; and

In the said agreement itself, as a part of the purchase money consideration, in addition to other considerations named therein, to be paid to the Cherokees for relinquishment of their title to certain territory comprising 8,144,682.91 acres, the United States further expressly contracted and agreed that they would pay the said old debts in full as soon as the exact amount thereof could be ascertained by them and accepted by the Cherokees (which was the object of the accounting), the certain fixed time of payment to be determined in the manner also provided in the agreement. This fixed time for payment was determined in the manner provided and was during the session of Congress that convened in December, 1894, or on or before the 4th day of March, 1895; and

Also in the agreement itself, as an additional part of the purchase money to be paid for said land, the United States agreed that: "So long as the money or any part of it shall remain in the Treasury of the United States, after this agreement shall have become effective, such sums so left in the Treasury of the United States shall bear interest at the rate of 5 per centum per annum, payable semiannually." (S. Doc. No. 215, 56th Cong., 1st sess., p. 50.)

In other words, the sums found due in said account under older treaties and laws were, under the said agreement of 1891-1893, finally payable on or before March 4, 1895, both principal sums and accrued interest, and to provide against delay in making payment in full, or as compensation for possible delay, the above last-quoted express agreement as to interest was made, to wit, that so long as any part of said sums (original principals plus interest to Mar. 4, 1895) should thereafter remain in the Treasury of the United States, such sums so left in said Treasury should bear interest at five per centum per annum.

The United States did not pay the money. Congress did not make the appropriation at that session of Congress, nor ever at all, according to agreement.

The amounts due and payable March 4, 1895, were, to wit:

Item 1:

| | | |
|--|--------------|---------------|
| Under the treaty of 1819----- | \$2, 125. 00 | |
| Interest from Feb. 27, 1819, to Mar. 4, 1895---- | 8, 076. 45 | |
| | | \$10, 201. 45 |

Item 2:

| | | |
|--|-----------------|-----------------|
| Under the treaty of 1835----- | 1, 111, 284. 70 | |
| Interest from June 12, 1838, to Mar. 4, 1895---- | 3, 151, 938. 31 | |
| | | 4, 263, 223. 01 |

Item 3:

| | |
|---|----------|
| Under the treaty of 1866----- | \$432.28 |
| Interest from Jan. 1, 1874, to Mar. 4, 1895---- | 457.62 |

\$889.90

Item 4:

| | |
|---|-----------|
| Under act of Congress, 1893----- | 20,406.25 |
| Interest from July 1, 1893, to Mar. 4, 1895---- | 1,710.75 |

22,117.00

Assuming that the calculation of the interest on the several items is correct, that the above amounts, original principals plus interest, were due and payable according to the express terms of the agreement of 1891-1893, on March 4, 1895, can not now be held open to question or dispute, the Supreme Court of the United States having definitely decided the matter in 1906. (See *infra*.)

The United States not only did not pay, having in the meantime already received the cession of the land for which immediate payment of the said amounts was an essential part of the purchase price, but promptly assumed an attitude of passive hostility toward "the claim" of the Cherokees. Congress did nothing in the matter for more than seven years.

In an act of Congress approved July 1, 1902 (32 Stats. L., 716-727, at p. 726, sec. 68), amended and construed March 3, 1903 (32 Stats. L., 982-1011, at p. 996), the Cherokees were enabled to bring suit against the United States on the said account rendered to and accepted by them in 1894. (See *supra*.)

The main issues raised and decided in the suits brought against the United States by the Cherokees under the jurisdictional acts referred to, pertinent to the claim we are now presenting, were the following:

The Cherokees alleged:

1. That the United States owed them the amounts found due in the account aforesaid, on the agreement of 1891-1893.

2. Assuming that the United States were not bound by said account to pay the amounts found due therein, that nevertheless they owed them (the Cherokees) the sums of money set out therein, with interest thereon as stated, upon the original treaties and laws under which the said money was found to be due by the accountants.

The United States answered:

1. Denied that they owed the Cherokees anything whatever of the amounts stated in said account upon the agreement of 1891-1893.

2. Denied that they owed the Cherokees under the original treaties and laws as stated in said account.

On the 20th day of March, 1905, the Court of Claims decided the controversy in favor of the Cherokees, concluding as follows: "A decree will be entered in this case * * *. It will provide: 'That the Cherokee Nation recover upon the agreement with the United States concluded on the 19th December, 1891, and ratified by the United States 3d March, 1893 (27 Stat. L., p. 640, S. 10), the amounts found due in the account rendered thereunder by the United States * * *.' (40 Ct. Cl. at p. 331.)"

The decree was entered May 18, 1905. (*Ibid*, pp. 363-364.)

The judgment consisted of the four items set forth in the said account and did not embrace within its express terms any such interest as was payable on said items from the time they became due under the agreement and authorized by law. Such interest was not confided to the discretion of the court and was not a question of dispute nor a matter of issue between the parties in said cause. When the contention of the Cherokees that the money was due and payable upon the agreement of 1891-1893 was sustained by the court, interest thereon, provided for in another part of the agreement not in issue (authorized by law), followed as a matter of course.

The United States appealed from the judgment of the Court of Claims to the Supreme Court of the United States, and on December 29, 1905, the attorneys for the Cherokees filed a certified transcript of said judgment with the Secretary of the Treasury. (H. Doc. No. 1418, 60th Cong., 2d sess., p. 7.)

April 30, 1906, the Supreme Court, by Chief Justice Fuller, approved the opinion of the Court of Claims and affirmed the judgment in favor of the Cherokees. (202 U. S., 101 et seq., pp. 120-123.)

Both courts, the Supreme Court quoting the language used by the Court of Claims with approval, said:

"In the opinion of the court this case is simply one to recover purchase money upon a contract of sale. Ordinarily in such a case the cession would

not be made, the deed would not be delivered until the purchase money is paid or secured, or at least the amount be ascertained and liquidated. In this case both parties wanted to expedite the transaction. It was important for the United States that the cession of the territory should be made immediately; it was desirable for the Cherokee Nation that the purchase money should be paid soon. But nevertheless the Cherokee Nation had the right to immediate payment, and the agreement intended to secure to them the next thing to it—the right to an early payment. The accounting was merely a means to an end. The end was the immediate payment, as near as might be, of the whole consideration to be given for the cession of the Outlet. When the cession was made the purchase money was due; the only thing remaining, which was the object of the accounting, was to ascertain the exact amount. This is not the case of a party prosecuting an unliquidated debt, but a case of sale and delivery and nonpayment of the purchase money for the thing sold and delivered. The United States were willing to pay; the Cherokee Nation wanted the payment made at the earliest possible day. * * * The United States were to render their account 'without delay'; if the Cherokee Nation accepted it the amount was to be appropriated by Congress; 'such appropriation to be made by Congress if then in session, and if not, then at the session immediately following such accounting.' * * * with the Nation's acceptance of the account (December 1, 1894) the session at which an appropriation should be made became fixed and certain. * * * The Cherokee Nation has parted with the land * * * and the United States are placed in the position of having broken and evaded the letter and spirit of their agreement." (202 U. S., at pp. 120-123.)

The mandate of affirmance of the judgment of the Court of Claims by the Supreme Court was dated May 14, 1906. (H. Doc 1418, 60th Cong., 2d sess., pp. 9, 10, 11.)

On May 28, 1906, the Court of Claims entered its final decree, and at the same time rendered final judgment in favor of the attorneys who had represented the Cherokees in the litigation for their fees and expenses, basing same upon a certain percentage of the gross sum named in the decree. (Id. pp. 4, 5.)

June 30, 1906, by an item in the general deficiency appropriation act of that year, Congress appropriated the money to pay the said judgment, "with interest upon the several items of judgment at five per centum * * *." "Together with such additional sum as may be necessary to pay interest as authorized by law." (34 Stat. L., at p. 664.)

It seemed to the Cherokees that the transaction was now about closed—the long controversy finally at an end. Their contention that the amounts found due them in the account rendered by the United States in 1894 were not only justly owing to them under the old treaties and law as stated therein, but were payable under and at the time provided for in the agreement of 1891-1893—to wit, on or before the 4th day of March, 1895—had been expressly sustained by the highest court in the land. Congress had at last appropriated for them the money that should have been appropriated not later than March 4, 1895. They believed, and had every confident right to expect, that the same interest would be allowed and paid to them that they would have received if the United States had paid the money on March 4, 1895, to the credit of the Cherokees on the books in the Treasury Department and elected to pay the interest contracted to be paid instead of distributing the funds. The contract was: "So long as the money or any part of it shall remain in the Treasury of the United States, after this agreement shall have become effective, such sums so left in the Treasury of the United States shall bear interest at the rate of five per centum per annum payable semiannually"; and when Congress also appropriated "such additional sum as may be necessary to pay interest as authorized by law" it was confidently believed that the accounting officers of the Treasury would allow this interest expressly provided for on these particular funds in the agreement under which the money was due and payable and upon which the judgment was based. But it was not done, as we shall show.

The material portion of the judgment in favor of the attorneys, referred to above, was as follows:

"It is, therefore, this 28th day of May, 1906, adjudged, ordered, and decreed that out of said sum named in item two of the decree payable to the Eastern Cherokees there shall first be deducted an amount equal to fifteen per centum thereof, principal and interest, as the compensation of said attorneys * * *.

"It is further ordered, adjudged, and decreed that the payment of the said fifteen per centum be made by the Secretary of the Treasury, as herein directed, immediately upon the appropriation by Congress for the payment of this judgment."

The "said sum named in item two of the decree" was, to wit:

"Item 2. The sum of \$1,111,284.70, with interest thereon at the rate of 5 per cent from June 12, 1838, to date of payment." (40 Ct. Cl. at pp. 363-364.)

As before stated, the appropriation to pay said judgment was made June 30, 1906, and on July 3, 1906, the attorneys presented their claims for fees to the Secretary of the Treasury, and also then agreed that, so far as their interest in the judgment was concerned, the "date of payment" should be the date of the appropriation, June 30, 1906. (11, Doc. 1418, 60th Cong., 2d sess., middle of p. 5.)

In order to segregate and apportion the amount due each attorney, according to the percentages fixed by the court, the Comptroller of the Treasury, on July 11, 1906, decided upon the following method to ascertain "the sum named in item two of the decree," upon which the 15 per cent should be computed as the compensation to be paid:

"First, interest at the rate of 5 per cent should be computed on the principal sum from June 12, 1838, to December 29, 1905, the date on which the transcript of the judgment was filed with the Secretary of the Treasury; second, the amount of such interest should be added to the principal and on this sum interest should be computed at 4 per cent from December 30, 1905, to May 14, 1906, the latter date being the date on which the mandate of the Supreme Court of the United States was issued in this case; third, that no interest should be computed after this date." (H. Doc. 1418, 60th Cong., 2d sess., pp. 5, 6, 7.)

There was a judgment in favor of the attorneys in the original decree of May 18, 1905, as follows:

"* * * so much of the amount shown in item numbered two (2) as this court hereafter by appropriate order or decree shall allow for counsel fees and expenses under the act of March 3, 1903, above referred to, shall be paid by the Secretary of the Treasury to the persons entitled to receive the same upon the making of an appropriation by Congress to pay this judgment.

"The allowance of fees and expenses by this court under said act of March 3, 1903, is reserved until the coming in of the mandate of the Supreme Court of United States." (Id., p. 9.)

As said above, a certified transcript of this judgment was filed with the Secretary of the Treasury on December 29, 1905. Therefore, the said attorneys were properly and justly given the benefit of the interest on their judgment provided for by law, as follows:

"And on judgments in favor of claimants which have been appealed by the United States and affirmed by the Supreme Court, interest, at the rate of four per centum per annum, shall be allowed and paid from the date of filing the transcript of judgment in the Treasury Department up to and including the date of the mandate of affirmance by the Supreme Court; provided, that in no case shall interest be allowed after the term of the Supreme Court at which said judgment was affirmed." (26 Stat. L., at p. 537.)

The accounting officers of the Treasury, unintentionally or inadvertently, perhaps, failed to distinguish between the "interest authorized by law" applicable to the judgment in favor of said attorneys and "interest authorized by law," payable on the main judgment in favor of the Cherokees, under express provisions of the agreement of 1891-1893 and under laws of the United States requiring interest at 5 per cent on trust funds. The attorneys could only properly receive 15 per cent on the sum named in the decree, for which they held a separate judgment, and, in addition, interest on their said judgment from the date of filing of their transcript in the Treasury Department up to the date of the mandate of the Supreme Court. This sum was paid to them.

The Cherokees should have been then paid the sums named in the decree, "together with such additional sum" as may have been necessary to pay interest according to the express terms of the contract upon which the judgment was based, or according to express provisions of law requiring interest on trust funds in the hands of the United States. This interest was not paid and has not been paid to this day. The settlement given to the Cherokees was the same as that on which the attorneys received their 15 per cent fees and did not include interest promised by the express terms of the contract of 1891-1893 and authorized by law.

The settlement was in July, 1906, and was as follows, to wit:

Item 1:

| | |
|---|--------------|
| Original principal sum----- | \$2, 125. 00 |
| 5 per cent interest from Feb. 27, 1819, to Dec. 29, 1905----- | 9, 226. 28 |
| Interest-bearing judgment----- | 11, 351. 28 |
| 4 per cent interest to May 14, 1906----- | 169. 18 |
| Total amount allowed and paid----- | 11, 520. 46 |

Item 2:

| | |
|---|-----------------|
| Original principal sum----- | 1, 111, 284. 70 |
| 5 per cent interest from June 12, 1838, to Dec. 29, 1905----- | 3, 753, 249. 90 |
| Interest-bearing judgment----- | 4, 864, 534. 60 |
| 4 per cent interest to May 14, 1906----- | 72, 501. 56 |
| Total amount allowed and paid----- | 4, 937, 036. 16 |

Item 3:

| | |
|--|------------|
| Original principal sum----- | 432. 28 |
| 5 per cent interest from Jan. 1, 1874, to Dec. 29, 1905----- | 691. 46 |
| Interest-bearing judgment----- | 1, 123. 74 |
| 4 per cent interest to May 14, 1906----- | 16. 75 |
| Total amount allowed and paid----- | 1, 140. 49 |

Item 4:

| | |
|--|-------------|
| Original principal sum----- | 20, 406. 25 |
| 5 per cent interest from July 1, 1903, to Dec. 29, 1905----- | 2, 546. 58 |
| Interest-bearing judgment----- | 22, 952. 83 |
| 4 per cent interest to May 14, 1906----- | 342. 09 |
| Total amount allowed and paid----- | 23, 294. 92 |

The aggregate amount of the four items, to wit, the sum of \$4,972,992.04, was, on July 2, 1906, paid to the Secretary of the Interior in trust for the Cherokees. No interest whatever was allowed after May 14, 1906. The date "1903" appearing in item 4 is an error; it should be "1893." There seems to be no objection offered to the correction of the error and payment of interest on this original sum from July 1, 1893, instead of 1903.

The fund arising from item 2 being distributable per capita, it became necessary to identify the individuals who would be entitled to shares thereof. This task was not completed until March 15, 1910, having been performed by and under the direction and approval of the Court of Claims. Inasmuch as, under the decision of the comptroller of July, 1906, this fund was not, and had not been, bearing interest since it was paid to the Secretary of the Interior on July 2, 1906, and since the Cherokees were clearly entitled to interest thereon until such time as it could be withdrawn from the Treasury and delivered to the individuals having a right to receive it per capita, on March 4, 1909, Congress enacted the following item:

"That the general deficiency appropriation act of June thirtieth, nineteen hundred and six, so far as the same provides for the payment of item two of the judgment of the Court of Claims of May eighteenth, nineteen hundred and five, in favor of the Eastern Cherokees, shall be so construed as to carry interest on said item two up to such time as the roll of the individual beneficiaries entitled to share in said judgment shall be finally approved by the Court of Claims, and for the payment of said interest a sufficient sum is hereby appropriated." (35 Stat. L., pp. 938-939.)

The said roll was finally approved March 15, 1910. On April 2, 1910, the matter having again been referred to the comptroller, it was decided that the total amount to be paid to the Cherokees on account of item 2 of said judgment, and the fund arising therefrom, would be the original principal sum due under the treaty of 1835, to wit, \$1,111,284.70, with interest thereon at 5 per cent from June 12, 1838, to March 15, 1910, as the "date of payment." It is conceded that under this method of settlement the money due under the treaty of 1835 would be fully paid and that it has been paid. But the agreement of 1891-1893 created a new debt, to wit, interest at 5 per cent per annum on the liquidated amount of the said old debt from March 4, 1895, the date said money

was finally payable according to express promise under said agreement, so long thereafter as the said amount should remain in the Treasury of the United States. This debt has not been paid notwithstanding, as the Cherokees believe, Congress fully intended to appropriate the money in full by the items in the acts of June 30, 1906, and March 4, 1909, quoted above.

Even if there had been no express provision in the agreement of 1891-1893 for the payment of interest on "the money or any part of it" so long as any such part remained in the Treasury after March 4, 1895, quoted hereinbefore, the United States would still, nevertheless, have been liable to pay the Cherokees interest at 5 per cent per annum on the said funds due March 4, 1895, under section 3659 of the Revised Statutes (1871), which reads as follows:

"All funds held in trust by the United States, and the annual interest accruing thereon, when not otherwise required by treaty, shall be invested in stocks of the United States, bearing a rate of interest not less than five per centum per annum."

Furthermore, this was not an ordinary debt of the United States. It was a trust account, a liquidated amount, in the hands of the United States as trustee, and it was unjustly, not to say wrongfully, withheld by the trustee, the United States.

The bill H. R. No. 6444, Sixty-fourth Congress, first session, provides for the payment of interest only on the amount of money actually paid into the hands of the Secretary of the Interior, in trust for the Cherokees, July 2, 1906, and does not provide for the payment of the interest promised and contracted to be paid. This is a compromise proposition. In consideration of an immediate payment, by direct appropriation, thereby obviating the necessity of a long-drawn-out controversy, the Cherokees propose to accept the settlement made in July, 1906, with their attorneys, up to July 2, 1906, only, however, and to take in full payment of their claim the gross amount then actually paid to the Secretary of the Interior, in trust for them, with interest thereon at 5 per cent per annum from July 2, 1906, up to the date warrants shall be, or have been, actually issued to the individuals entitled to receive shares of said funds—and in addition the clerical error in the date when interest should be commenced on the original principal sum of item 4 to be corrected so that interest shall be allowed thereon from July 1, 1893, instead of July 1, 1903.

This is the most that could reasonably be expected of the Cherokees. By this compromise settlement the Government is relieved of what the Cherokees honestly believe to be a debt to them of a very large sum of money above the amount proposed to be accepted in full payment.

We respectfully and humbly pray that the bill H. R. 6444 shall be enacted into law.

With sentiments of the highest consideration and respect,

We remain your humble servants,

FRANK J. BOUDINOT,
Attorney for Cherokee Nation.

DEPARTMENT OF THE INTERIOR,
Washington, June 29, 1916.

MY DEAR MR. STEPHENS: Reference is made to your letter of April 29, 1916, requesting a report on H. R. 6444, providing for the payment of certain items of interest of the judgment of the Court of Claims of May 18, 1905, in favor of the Cherokee Indians. (40 Ct. Cls. 252.)

It appears from the opinion of the Comptroller of the Treasury, dated May 25, 1916, that interest was computed on the several items of the judgment mentioned in this bill as follows:

"Item 1. At 5 per cent on original principal from February 27, 1819, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906.

"Item 2. At 5 per cent on original principal from June 12, 1838, to March 15, 1910.

"Item 3. At 5 per cent on original principal from January 1, 1874, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905 to May 14, 1906.

"Item 4. At 5 per cent on original principal from July 1, 1903, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906."

There is inclosed a copy of the comptroller's opinion, from which you will see that under existing law there is no authority for the computation of interest on the various items of this judgment on any other basis than as above indicated.

The Comptroller of the Treasury expresses the opinion that the failure to allow interest in item 4 from 1893 instead of 1903, was no doubt due to a clerical error in the wording of the court's decree, and that therefore there would appear to be merit in the provision of the proposed bill looking to the correction of this error. As to the merits of the other provisions of the bill he does not care to express an opinion at this time.

The matter of the computation of interest on these various items has been the subject of correspondence between this department and various persons interested in the Cherokee Indians. It has been contended that the interest was not computed in accordance with the orders of the court and the terms of the contract of December 19, 1891, between the United States and the Cherokee Nation, ratified by the act of March 3, 1893 (27 Stat. L., 612-640).

The question of whether the Cherokee Indians are entitled to interest from and after July 2, 1906, upon items 1, 2, and 3, to the date of actual payment, is not one upon which I am prepared to express an opinion. As to item 4, I am convinced that failure to allow interest from July 1, 1893, was due to a clerical error in the wording of the court's decree and I have no objection to legislation authorizing the interest on said item at 5 per cent on the original principal from July 1, 1893, to December 29, 1905, and at 4 per cent on the original principal plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906. I am not, however, in a position to say whether they should have interest on the total of this item from July 2, 1906, to the date of payment.

In this connection I would have no objection to legislation providing for the adjudication by the Court of Claims of the question of whether the Cherokee Indians are entitled to interest from July 2, 1906, to the date warrants were actually issued to the individual beneficiaries entitled thereto.

I therefore recommend that the proposed bill be amended by striking therefrom lines 1 to 25 on page 2 and lines 1 to 4 on page 3 and inserting in lieu thereof the following: "are hereby so amended as to allow interest to be paid at 5 per cent on the original principal sum of item 4 of said judgment from July 1, 1893, to December 29, 1905, and at 4 per cent on the original principal of said item plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906. Jurisdiction is hereby conferred upon the Court of Claims to hear and determine claims of the Cherokee Tribe of Indians to interest on the several funds arising from items 1, 2, 3 and 4, respectively, of said judgment from July 2, 1906, to date warrants were actually issued to the individual beneficiaries entitled thereto. Such claims shall be presented within one year after the passage of this act, and the petition shall be verified by the attorney or attorneys employed by said Indians to prosecute their claims under this act under contract approved by the Commissioner of Indian Affairs and the Secretary of the Interior, as provided by law, and they shall be paid such fee as the court may find reasonable: *Provided*, That in no case shall the fee decreed by said court be in excess of the amount stipulated in the approved contract, nor amount to more than 10 per cent of the sum said tribe shall be found entitled to: *And provided further*, That any amounts received shall be disbursed under the supervision of the Secretary of the Interior to the parties entitled thereto in the manner prescribed by the Court of Claims."

With the changes suggested, I recommend the passage of the bill.

Very truly, yours,

FRANKLIN K. LANE, *Secretary*.

HON. JOHN H. STEPHENS,

Chairman Committee on Indian Affairs,

House of Representatives.

TREASURY DEPARTMENT,

Washington, May 25, 1916.

The honorable the SECRETARY OF THE TREASURY.

SIR: I have your letter of the 16th instant, requesting my views as to the merits of H. R. 6444, Sixty-fourth Congress, first session, being a bill providing for the payment of certain items of interest on the judgment of the Court of Claims of May 18, 1905, in favor of the Cherokee Indians (40 C. Cls., 252), and asking for my opinion as to whether said interest items could be paid under

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existing law or whether additional legislation, such as the proposed bill, would be necessary to authorize payment.

The items embraced in the judgment of the Court of Claims are as follows:

"Item 1. The sum of \$2,125, with interest thereon at the rate of 5 per cent from February 27, 1819, to date of payment.

"Item 2. The sum of \$1,111,284.70, with interest thereon at the rate of 5 per cent from June 12, 1838, to date of payment.

"Item 3. The sum of \$432.28, with interest thereon at the rate of 5 per cent from January 1, 1874, to date of payment.

"Item 4. The sum of \$20,406.35, with interest thereon from July 1, 1903, to date of payment."

"The appropriation made in the act of June 30, 1906 (34 Stat., 664), for the payment of this judgment provided for the payment of only such interest "as authorized by law." The act of March 4, 1909 (35 Stat., 938), provided for the payment of interest on item 2 "up to such time as the roll of the individual beneficiaries entitled to share in said judgment shall be finally approved by the Court of Claims." Said roll was finally approved by the court, March 15, 1910. While I am not advised as to what payments have been made in this case, I presume that in accordance with the decisions of this office interest was computed on these various items as follows:

"Item 1. At 5 per cent on original principal from February 27, 1819, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906.

"Item 2. At 5 per cent on original principal from June 12, 1838, to March 15, 1910.

"Item 3. At 5 per cent on original principal from January 1, 1874, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906.

"Item 4. At 5 per cent on original principal from July 1, 1903, to December 29, 1905, and at 4 per cent on original principal, plus amount of interest to December 29, 1905, from December 30, 1905, to May 14, 1906."

Under existing law there is no authority for the computation of interest on the various items of this judgment on any other basis than as above indicated (38 MS. Comp. Dec., 45, July 11, 1906; 48 id., 631, Jan. 29, 1909; 53 id., 16, Apr. 2, 1910.)

The effect of the proposed bill would be to authorize payment of interest on the total amount of items 1 and 3, including interest to May 14, 1906, at the rate of 5 per cent from July 2, 1906, to the dates warrants are actually issued in payment thereof; the difference between the amount of item 4, with interest to May 14, 1906, computed as indicated above, and the amount of said item, with interest from July 1, 1893, instead of July 1, 1903, plus interest at 5 per cent on said increased amount from July 2, 1906, to date of issue of warrant in payment of said item; and the difference between the interest on item 2 at 5 per cent from June 12, 1838, to March 15, 1910, and the amount of interest on said item computed as follows:

At 5 per cent on original principal from July 12, 1838, to December 29, 1905; at 4 per cent on original principal, plus interest to December 29, 1905, from December 30, 1905, to May 14, 1906; and at 5 per cent on total amount, including interest to May 14, 1906, from July 2, 1906, to date of issue of warrant in payment.

The failure to allow interest on item 4 from 1893 instead of from 1903 was no doubt due to a clerical error in the wording of the court's decree. Therefore there would appear to be merit in the provision of the proposed bill looking to the correction of such error.

As to the merits of the other provisions of the bill, I do not care to express an opinion at this time.

All papers submitted are returned herewith.

Respectfully,

W. W. WARWICK, *Comptroller*.

STATEMENT OF HON. ROBERT LATHAM OWEN, UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA.

Senator OWEN. I represented the Cherokees in bringing this suit on behalf of the Eastern Cherokees. I had charge of it until it was taken through the Supreme Court and a favorable judgment ren-

dered. It was a very remarkable case. The Cherokees had, through the accounting officers of the Treasury, a very large sum—over a million dollars—just charged up against them without any justification. The Supreme Court held that the fund ought not to have been charged against them. It was charged against them about 1835, and stayed charged against them very many years, until the Supreme Court finally declared it was erroneous to have made that charge against them and that they were entitled to it and the interest upon it, because it was a trust fund. It was the proceeds from the lands in the east of Georgia and western Carolinas and eastern Tennessee, which was, in effect, taken from the Cherokees at the point of the bayonet, practically through the enforcement of a treaty of 1835. They were practically unanimous—the members of the tribe, about 16,000 of them—in signing a most distressing plea to Congress, praying Congress not to enforce that treaty against them; but there was such a conflict of interest amongst the settlement in those States that the Government had found it necessary to have them moved, and they were moved by force. They went into Oklahoma, and this charge was made against them at that time. The funds were immediately charged against them upon the ground that they were chargeable with the cost of their own removal. The matter wound up and left some of these interest charges not satisfactorily settled.

I think they have a good claim on some of these items. I will not pretend to take up the time of the committee in discussing them, but I think they ought at least to be permitted to be heard upon it.

So far as Mr. Boudinot's claim for compensation is concerned, I have no hesitancy in saying that I had a great deal of knowledge of that when it was going on, and in saying that, except for his activities, the case would not have been worked out satisfactorily or successfully. When the compensations were made, he neglected to provide for himself: so the claims, I think, ought to be provided for.

The Cherokee chief is justified in saying that there is due to Mr. Boudinot the amounts suggested and set forth. He rendered the service, and, I think, is entitled to be compensated. He has been denied a compensation for a very long time. He has been the man behind the gun, so far as the Cherokees are concerned. He has been their friend, their advisor and counsellor, and has done more work than anybody else.

There is an organization of Cherokees, with a membership of, I believe, about 10,000. What is the membership, Mr. Hastings?

MR. HASTINGS. I do not know, but it is very large.

SENATOR OWEN. It practically embraces all the full-blood Cherokees: and they regard themselves as the keepers of the tribe. These Keetoowah Indians are the real full-blooded Cherokees. They have been constantly advised by Mr. Boudinot, and he has been the secretary of that organization for a good many years, and has been their principal advisor, counsellor, and friend. His claim, from what I know of it, is just.

If there are any questions the gentlemen of the committee desire to ask, I shall be glad to answer them.

MR. KNOX. If there are no questions, that will be all. We are very much obliged for your statement, Senator.

(Whereupon, at 11.50 a. m., the committee adjourned.)



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